

Matthew B. Lehr (Bar No. 213139)
 Diem-Suong T. Nguyen (Bar No. 237557)
 David J. Lisson (Bar No. 250994)
 Chung G. Suh (Bar No. 244889)
 Jeremy Brodsky (Bar No. 257674)
 DAVIS POLK & WARDWELL LLP
 1600 El Camino Real
 Menlo Park, California 94025
 Telephone: (650) 752-2000
 Facsimile: (650) 752-2111

Attorneys for Plaintiff
 Tyco Healthcare Group LP d/b/a
 VNUS Medical Technologies

UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

TYCO HEALTHCARE GROUP LP d/b/a)	LEAD CASE NO. C08-03129 MMC
VNUS MEDICAL TECHNOLOGIES,)	CASE NO. C08-03129 MMC
)	
Plaintiff,)	STIPULATION AND PROPOSED
)	ORDER REGARDING ADDENDA TO
v.)	STIPULATIONS REFLECTED IN
)	JOINT PRETRIAL STATEMENT (D.I.
BIOLITEC, INC. and NEW STAR LASERS,)	286)
INC. d/b/a COOLTOUCH, INC.,)	
)	
Defendants.)	

Judge: Hon. Maxine M. Chesney

TYCO HEALTHCARE GROUP LP d/b/a)	CASE NO. C08-04234 MMC
VNUS MEDICAL TECHNOLOGIES,)	(consolidated with C08-03129 MMC)
)	
Plaintiff,)	
)	
v.)	
)	
TOTAL VEIN SOLUTIONS, LLC d/b/a)	
TOTAL VEIN SYSTEMS,)	
)	
Defendant.)	

1 WHEREAS, on August 30, 2010 pursuant to this Court's Pretrial Preparation Order, the
2 parties filed a Joint Pretrial Statement (D.I. 286) that set forth the parties' stipulations regarding
3 pretrial preparation and the conduct of trial and stipulations of fact;

4 WHEREAS since the filing of the Joint Pretrial Statement, the parties have reached the
5 following additional stipulations:

6 1. Defendants agree not to reference, or present evidence or ask questions regarding,
7 statements by PTO Examiner Lee S. Cohen made in connection with the prosecution of U.S. Patent
8 Application No. 10/738,488, including (1) in the course of Defendants' witness' testimony, and (2)
9 when cross-examining VNUS's witnesses;

10 2. The parties agree not to reference, or present evidence or ask questions regarding,
11 any alleged independent or prior invention or copying of the claimed methods of the patents-in-suit
12 by Dr. Robert Min or Dr. Luis Navarro, including (1) in the course of the party's experts'
13 testimony, and (2) when cross-examining another party's expert;

14 3. VNUS agrees not to reference, or present evidence or ask questions regarding,
15 benefits of tumescent anesthesia solely for insulation and/or anesthesia (and without compression)
16 to show secondary indicia of nonobviousness or copying;

17 4. Defendants agree to make available at trial Tyrell Schiek, Brian Foley, and David
18 Hennings for VNUS to call during its case in chief, and that no subpoenas will be required as to
19 such witnesses;

20 5. biolitec believes that it had knowledge of VNUS's Closure procedure as of
21 November 2001;

22 6. SAFONOV, "Multimodality Treatment of Varicosity with Electrocoagulation
23 Medical Guidelines," May 5, 1974, Moscow (starting production number BIO006428) is authentic
24 and constitutes a printed publication within the meaning of 35 U.S.C. § 102(b) published more than
25 one year prior to September 11, 1997; however, VNUS reserves all rights to contest whether such
26 reference invalidates any of the patents-in-suit under 35 U.S.C. §§ 102 and/or 103; and
27
28

1 7. The translation accompanying the foregoing publication and produced therewith is
2 adequate to be admitted into evidence; however, VNUS reserves all rights to contest the accuracy
3 of the translation.

4 8. The parties agree that a party may offer at trial any exhibit from the opposing side's
5 exhibit list, subject to whatever objections are made at the time of proffer.

6 9. To assist all parties in scheduling for trial, the parties agree to exchange, by 5:00 pm
7 Eastern time on September 28, 2010, a good-faith list of the witnesses they intend to call in their
8 respective cases-in-chief at trial, the order in which they intend to call those witnesses, and a good-
9 faith estimate of the length of each witness's direct testimony. The parties further agree to apprise
10 one another of any changes to their witness lists, order and time estimates by 5:00 pm Eastern time
11 on October 4, 2010 and October 11, 2010, if they in good faith expect any changes to the lists,
12 order or time estimates they have previously provided.

13 10. The parties agree that if they elect to call witnesses from their "May Call" lists to
14 testify live as part of their respective cases-in-chief, the party calling the witness will disclose such
15 intention no later than 5:00 pm California time three days before the witness is called to the witness
16 stand.

17 11. The parties agree that, to the extent witnesses are called in (or back) for rebuttal or
18 impeachment, the party calling the witness will disclose such intention no later than 5:00 pm
19 California time the day before the witness is called to the witness stand, if sufficient time exists for
20 such notice to be provided.

21 NOW, THEREFORE, the parties request that the stipulations set forth in paragraphs 1-4 and
22 8-11 above be entered as addenda to Section III of the Joint Pretrial Statement (Stipulations
23 Regarding Pretrial Preparation and Conduct of Trial) and that the stipulations set forth in
24 paragraphs 5-7 above be entered as addenda to Section IV.A. of the Joint Pretrial Statement
25 (Stipulated Facts).

1 Dated: September 27, 2010

DAVIS POLK & WARDWELL LLP

2
3 /s/ David J. Lisson

4 Matthew B. Lehr (Bar No. 213139)
5 Diem-Suong T. Nguyen (Bar No. 237557)
6 1600 El Camino Real
7 Menlo Park, CA 94025
8 Tel: (650) 752-2000
9 Fax: (650) 752-2111
10 matthew.lehr@davispolk.com
11 suong.nguyen@davispolk.com

12 Attorneys for Plaintiff
13 Tyco Healthcare Group LP d/b/a
14 VNUS Medical Technologies

15 WOLF, GREENFIELD & SACKS, P.C.

16
17 /s/ Michael N. Rader

18 Michael N. Rader (admitted pro hac vice)
19 Charles T. Steenburg (admitted pro hac vice)
20 600 Atlantic Avenue
21 Boston, MA 02210
22 Tel: (617) 646-8000
23 Fax: (617) 646-8646
24 mrader@wolfgreenfield.com
25 csteenburg@wolfgreenfield.com

26 Attorneys for Defendant biolitec, Inc.

27 ORRICK, HERRINGTON & SUTCLIFFE LLP

28
29 /s/ James W. Geriak

30 James W. Geriak (Bar No. 32871)
31 Allan W. Jansen (Bar No. 81992)
32 4 Park Plaza, Suite 1600
33 Irvine, CA 92614-2558
34 Tel: (949) 567-6700
35 Fax: (949) 567-6710
36 jgeriak@orrick.com
37 ajansen@orrick.com

38 Attorneys for Defendant
39 New Star Lasers, Inc. d/b/a CoolTouch, Inc.

BUCHE & ASSOCIATES, P.C.

/s/ John K. Buche

John Karl Buche (Bar No. 239477)
Sean M. Sullivan (Bar No. 254372)
875 Prospect, Suite 305
La Jolla, CA 92037
Tel: (858) 812-2840
Fax: (858) 459-9120
jbuche@westerniplaw.com
sean@westerniplaw.com

Attorneys for Defendant
Total Vein Solutions, LLC d/b/a Total Vein
Systems

I hereby attest that I have on file written (or e-mail) permission to sign this stipulation from all parties whose signatures are indicated by a “conformed” signature (/s/) within this e-filed document.

Dated: September 27, 2010

/s/ David J. Lisson
David J. Lisson

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: September 29, 2010


HON. MAXINE M. CHESNEY, U.S.D.